

If you wish to appear for oral argument, you must so notify the court and opposing counsel by 4:00 p.m. one court day before the hearing, pursuant to California Rules of Court, rule 3.1308. The court telephone number is (209) 533-6524.

Absent a request for oral argument, the tentative ruling will be adopted as final at the time set for hearing.

1. CV60114 Donald Jageman v. Sonora Community Hospital, et al.

Motion: Demurrer to Plaintiff's first amended complaint
Moving parties: Defendant James L. Reese, M.D.
Motion filed: September 19, 2016

Tentative ruling: The demurrer is SUSTAINED. Plaintiff shall have 20 days' leave to amend the first amended complaint consistent with the analysis below.

Analysis

The demurrer is sustained with respect to the second and third causes of action.

As to the second cause of action for medical battery, the Court finds that the allegations in the first amended complaint do not satisfy the first element of a cause of action for medical battery. (See CACI 530A.) Plaintiff alleges that he consented to receive an allergy injection but received the wrong medication in that injection. Such allegations do not satisfy the requirement that he allege having received a substantially different medical procedure from the one he authorized. Plaintiff shall have 20 days' leave to amend the first amended complaint with respect to this cause of action

As to the third cause of action for abandonment of patient, the Court finds that Plaintiff improperly pleaded this cause of action an intentional tort and that, as a claim for medical negligence, it is duplicative of the first cause of action. Plaintiff shall not have leave to amend the first amended complaint with respect to this cause of action.

Finally, it appears from the papers that, prior to the filing of this demurrer, there was no meet-and-confer in person or by phone. Subdivision (a) of section 430.41 of the Code of Civil Procedure requires the meet-and-confer process to take place in person or by phone. The parties do not have authority to alter the statutory requirement by meeting and conferring only in writing. For purposes of any future demurrers, this requirement must be met.